(18,493.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 301.

D. N. HOLDEN AND LIZZIE HOLDEN, BANKRUPTS, APPELLANTS,

vs.

J. A. STRATTON, TRUSTEE.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 26, 1903.

1 In the United States Circuit Court of Appeals for the Ninth Circuit.

In re D. N. HOLDEN and LIZZIE HOLDEN, Bankrupts. No. —.

Designation of Record under Rule 23.

To the above-named bankrupts and to P. P. Carroll, your solicitor:

You and each of you will please take notice that the error of the district court upon which the undersigned trustee intends to rely in his petition for revision and review from the order of the district court for the district of Washington, northern division, dated July 16th, 1901, which petition has heretofore been filed and copy thereof served upon you, is the error of adjudging an exemption in favor of you and each of you of the two policies of insurance referred to in that petition. As necessary for the consideration thereof the petitioner aforesaid designates the following portions of the record to be printed:

1. Order consolidating causes 1953 and 1954.
2. Adjudication of bankruptcy.
3. Order of district judge awarding insurance exemption.
4. The insurance policies.
5. The petition for revision and review.

2 6. The notice of filing and calling up the petition for revision and review.

BAUSMAN & KELLEHER,
Solicitors for J. A. Stratton, Trustee in Bankruptcy of D. N. Holden and Lizzie Holden, Bankrupts.

Due service of foregoing designation of record under rule 23, and receipt of copy thereof, duly admitted this 7th day of August, 1901.

P. P. CARROLL,
By J. E. C.,
Solicitor for D. N. Holden and Lizzie Holden, Bankrupts.

(Endorsed:) 729. In the United States circuit court of appeals for the ninth circuit. *In re* D. N. Holden and Lizzie Holden, bankrupts. Designation of record under rule 23. Filed August 10, 1901. F. D. Monckton, clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

In re D. N. HOLDEN and LIZZIE HOLDEN, Bankrupts.

Stipulation as to Certain Facts.

It is hereby stipulated and agreed by and between Bausman and Kelleher, solicitors for J. A. Stratton, appellant and trustee, and P. P. Carroll, solicitor for said bankrupts, appellees:

3 That for the purpose of said appeal, it is admitted that Schedule "A," attached to said bankrupts' answer and cross-

petition, filed February 9th, 1901, shows that all and every of the liabilities of said bankrupts were made and contracted between the first day of September, 1900, and the first day of December, 1900; and that Schedule "A," attached to said bankrupts' claim of exemptions, filed April 4th, 1901, shows that said bankrupts claim that the life-insurance policies in controversy in this appeal are exempt under that certain law of the State of Washington, approved March 20, 1895, and as amended by an act of the legislature of said State, approved March 10, 1897; which said law as amended appears in the published laws of said State, designated as the Laws of Washington, session of 1897, page 70.

BAUSMAN & KELLEHER,
Solicitors for Appellant.
P. P. CARROLL,
Solicitor for Appellees.

(Endorsed:) No. 729. In the United States circuit court of appeals. *In re* D. N. Holden and Lizzie Holden, bankrupts. Stipulation as to certain facts. Filed August 19, 1901. F. D. Monckton, clerk. P. P. Carroll, solicitor for appellees.

4 In the District Court of the United States for the District of Washington, Northern Division. In Bankruptcy.

In the Matter of the Bankruptcy of D. N. HOLDEN. No. 1953.

In the Matter of the Bankruptcy of LIZZIE HOLDEN. No. 1954.

Order Consolidating Causes.

On motion of P. P. Carroll, attorney for respondents D. N. and Lizzie Holden, and counsel for petitioners in open court agreeing thereto:

It is ordered that said causes be, and are hereby, consolidated; and that respondents be, and are hereby, allowed to join in one and the same answer to said petitions.

C. H. HANFORD, *Judge.*

(Endorsed:) Order. Filed in the United States district court, district of Washington, 10 a. m. February 9, 1901. R. M. Hopkins, clerk. H. M. Walthew, deputy.

5 In the District Court of the United States for the District of Washington, Northern Division.

In the Matter of D. N. HOLDEN and LIZZIE HOLDEN, Bankrupts. Nos. 1953, 1954. Consolidated.

Adjudication of Bankruptcy.

The above-entitled matter having been referred to the undersigned, and the same coming on to be heard upon the petition of the creditor and the answer and cross-petition of the respondents,

said creditor appearing by its attorneys, Bausman, Kelleher & Emory, and the respondents appearing by their attorney, P. P. Carroll, it is considered that the said respondents, and each of them, are bankrupt within the true intent and meaning of the acts of Congress relating to bankruptcy.

Whereupon, it is ordered and adjudged that the said respondents, D. N. Holden and Lizzie Holden, and each of them, be, and they are hereby, declared bankrupt accordingly.

Dated at Seattle in said district on this 25th day of February, A. D. 1901.

JOHN P. HOYT,
Referee in Bankruptcy.

(Endorsed:) Adjudication of bankruptcy. Filed in the United States district court, district of Washington, July 19, 1901, 10.30 a. m. R. M. Hopkins, clerk. H. M. Walthew, deputy. Filed February 25th, 1901, at 11 o'clock a. m. John P. Hoyt, referee.

6 In the District Court of the United States for the District of Washington, Northern Division.

In the Matter of the Bankruptcy of D. N. and LIZZIE HOLDEN. Nos. 1953, 1954. Consolidated.

Order Allowing Exemptions.

This cause coming on this 15th day of July, 1901, to be heard on the report of the referee, filed herein on the 17th day of June, 1901, and the exceptions of said bankrupts to said report in denying to said bankrupts their claim of exemptions to the following life-insurance policies, to wit: policies numbered 206,383 and 303,921, issued on the 15th day of June, 1894, by the Northwestern Life Insurance Company, of Milwaukee, Wisconsin; and the court, after hearing arguments of counsel for and against said report, being fully satisfied in the premises, allows the exemption of said policies claimed by said bankrupts.

Wherefore, it is ordered and adjudged that the report of the referee be, and the same is hereby, vacated and set aside, and that the bankrupts, D. N. Holden and Lizzie Holden be, and they are hereby, allowed their said claim of exemption as to said life-insurance policies; and it is further ordered and adjudged that the said life-insurance policies be and they are hereby exempt from all debts and liabilities of said bankrupts, and from all claims of every kind and character made in these proceedings by the cred-
7 itors of said bankrupts, and that said life-insurance policies be returned to said bankrupts.

Done in open court this 16th day of July, 1901.

C. H. HANFORD, *Judge.*

(Endorsed:) Order allowing exemptions. Filed in the United States district court, district of Washington, 11.45 a. m., July 17, 1901. R. M. Hopkins, clerk. H. M. Walthew, deputy.

Policy No. 206,383.

206,383, number. Age, 30.
Amount, $5,000. Premium, $233.80.

The Northwestern Mutual Life Insurance Company, by this policy of assurance,

in consideration of the statements made in the application for this policy, which is hereby referred to and made a part of this contract, and in further consideration of the payment, at the company's office in Milwaukee, Wisconsin, of two hundred thirty-three and $\frac{80}{100}$ dollars, and of the annual payment of a like sum, to be made at said office, at or before noon on or before the 21st day of May in every year during the first ten years from May 21, 1890, date of former policy, promises to pay, at its said office, unto Lizzie Holden, beneficiary, wife of Daniel N. Holden, the insured, of Seattle, in
3 the county of King and State of Washington, the sum of five thousand dollars, in sixty days after due proof of the fact and cause of the death of said insured during the continuance of this policy; the balance of the year's premium, if any, and any other indebtedness to the company on account of this policy being first deducted therefrom; provided, however, that if the said beneficiary shall not survive the said insured then such payment shall be made to the executors, administrators or assigns of the said insured.

This policy is issued on the semi-tontine plan, and its tontine dividend period is twenty years.

This policy shall, if kept in force, share in the surplus, according to the company's usage, at each distribution after twenty years from May 21, 1890, until all contributions to the surplus found in the course of making such distributions to have arisen from this policy shall have been returned; but no dividend shall be payable at or after the time default may be made in the payment of any premium.

And the said company further promises and agrees that if, after three or more annual premiums shall have been paid in cash, default shall be made in the payment of any premium on the day it shall become due, this contract shall secure paid-up non-participating insurance for as many tenth parts of the original sum insured as there shall have been complete annual premiums so paid, on condition that this policy be freed from all indebtedness to the company; and a paid-up policy will be issued accordingly on surrender of this policy.

9 This policy shall not bind the company until the first premium shall be actually paid, while the said insured is in good health, to the company or to some person authorized by the company to receive it, and is issued and accepted by the parties in interest on the express conditions stated on the second page of this policy, which are hereby made part of this contract.

In witness whereof the Northwestern Mutual Life Insurance Company, at its office in Milwaukee, Wisconsin, has by its president and

secretary signed and delivered this contract, this fifteenth day of June, one thousand eight hundred and ninety-four.

H. L. PALMER, *President.*

J. W. SKINNER, *Secretary.*

The following is endorsed upon the face of said policy:

Upon surrender by the insured and beneficiary of a policy for $10,000 of like number and kind, dated May 21, 1890, this policy for $5,000 is issued at their request in lieu of one-half of the former policy; in all other respects this policy is made and accepted pursuant and subject to the application upon which the original policy was issued. A full-paid life non-participating policy, number 303,921, for $2,000 is issued in consideration of the surrender of one-half of the original policy.

Milwaukee, Wis., July 6, 1894.—Premiums on this policy may be paid semi-annually by paying in lieu of the annual premium as stated therein the semi-annual cash premium of one hundred twenty-one and $\frac{20}{100}$ dollars on the 21st day of May and November in each year.

10 *Conditions Referred to on the Preceding Page of this Policy.*

1st. If the said premiums shall not be paid at or before the times within mentioned for the payment thereof, then, and in every such case, this policy shall cease and determine; and no premium after the first, hereby acknowledged, shall be considered paid unless a receipt shall be given therefor, signed by the president or secretary, and the payment and receipt of any premium less than a full annual shall not have the effect to continue this policy in force longer than three months in case of a quarterly payment, or six months in case of a semi-annual payment.

2d. If any fraudulent representation or statement shall be made in the application for this policy, or if, within two years from the date hereof, the said insured shall pass south of the tropic of cancer, or shall be personally engaged in blasting, mining or submarine operations, or in the production of highly inflammable or explosive substances, or as engineer or fireman of any locomotive engine, or in switching or coupling or uncoupling cars, or be employed in any capacity on the trains of a railroad, except as passenger or sleeping-car conductor, mail agent, express messenger, or baggage master, or in ocean navigation, or shall enter or be engaged in any military or naval service (except in time of peace), or shall undertake an
11 aerial voyage, or shall die in consequence of a duel, or shall, whether sane or insane, die by his own hand, then, and in every such case, this policy shall be null and void.

3d. If the age has not been understated and death shall occur later than three years from the date hereof, the liability of the company shall not be disputed on account of any statement in the application, except in case of actual fraud.

4th. In every case where this policy shall cease or become void,

all payments thereon shall be forfeited to the company, but paid-up insurance will be granted as within provided.

5th. If, within five years from the date hereof, the said insured becomes habitually intemperate, or so far intemperate as to induce delirium tremens, then and in either such case the company may, within said five years, but during *this* lifetime, cancel this policy, and thereupon shall be absolved from all liability upon the same, except only that it shall pay the amount of the reserve, computed according to the now existing standard of the State of Wisconsin, if this policy be surrendered in the lifetime of the insured and within one year from the cancellation of the same.

6th. If this policy shall be assigned, a duplicate of the assignment shall, within thirty days, be given to the company, and due proof of interest shall be produced on making claim.

7th. No dividend shall be allowed or paid upon this policy,
12 unless the insured shall survive the completion of its tontine dividend period, and unless this policy shall then be in force.

8th. The condition last preceding being contained in all policies issued on the semi-tontine plan, all savings made in consequence of it shall be apportioned equitably among such policies issued on that plan as shall complete their tontine dividend periods; and in making such apportionment, savings from lapses occurring in any year shall be distributed among those policies only upon which premiums shall have been payable in that year.

9th. Upon the completion of the tontine dividend period, provided this policy shall not have been terminated previously by lapse or death, the said insured, and his assigns, if creditors, shall, without the consent of any other person named within as beneficiary, have the option either:

First, to withdraw in cash the accumulated surplus apportioned by the company to this policy, leaving the policy participating and full paid for its face;

Secondly, on furnishing satisfactory proof that the insured is then in good health, to apply said surplus to the purchase of a non-forfeitable participating paid-up addition to the face of this policy; or, without proof of good health, to apply said surplus to purchase an annuity at the company's published rates;

Thirdly, to surrender this policy and receive therefor in cash its entire share of assets, that is, the accumulated reserve, together with the surplus apportioned, which reserve the company guaran-
13 tees shall not be less than twenty-four hundred nine and $\frac{55}{100}$ dollars in addition to said surplus; or

Fourthly, to surrender this policy and apply said entire share of assets to the purchase of a non-participating paid-up policy, payable in case of death to the beneficiary therein named, if any, or otherwise to the executors, administrators or assigns of the said insured, provided that satisfactory proof be furnished that the insured is then in good health.

If no notice in writing of the way elected in which to apply the tontine dividend be given to the company within sixty days after

the completion of the tontine dividend period, then the tontine dividend shall be applied in the first way mentioned.

10th. No note can be accepted for any premium, nor can this policy be restored, in case of default in the payment of any premium, later than sixty days after the date of such default, and then only provided the insured furnishes evidence of good health, and provided also that the premium be paid with interest at the rate of seven per cent. per annum, before the expiration of said sixty days.

Filed in the United States district court, district of Washington. June 17, 1901.

R. M. HOPKINS, *Clerk.*
H. M. WALTHEW, *Deputy.*

14 Policy No. 303,921.

Number 303,921. Age, 34.
Amount, $2,000. Premium, ——.

The Northwestern Mutual Life Insurance Company, by this policy of assurance,

in consideration of the statements made in the application heretofore made for policy numbered 206,383, which application is hereby referred to and made a part of this contract, and in further consideration of the surrender of one-half of said policy, promises to pay, at its office, in Milwaukee, Wisconsin, unto Lizzie Holden, beneficiary, wife of Daniel N. Holden, the insured, of Seattle, in the county of King, State of Washington, the sum of two thousand dollars, in sixty days after due proof of the fact and cause of the death of said insured during the continuance of this policy; provided, however, that if the said beneficiary shall not survive the said insured, then such payment shall be made to the executors, administrators or assigns of the said insured.

This policy shall have no participation in the surplus of the company.

This policy is issued and accepted by the parties in interest on the express conditions stated on the second page of this policy, which are hereby made part of this contract.

In witness whereof, The Northwestern Mutual Life Insurance Company, at its office in Milwaukee, Wisconsin, has by its
15 president and secretary signed and delivered this contract, this fifteenth day of June, one thousand eight hundred and ninety-four.

H. L. PALMER, *President.*
J. W. SKINNER, *Secretary.*

Conditions Referred to on the Preceding Page of this Policy.

1st. If no fraudulent representation or statement has been made in the original application upon which this policy is based, and if the age has not been understated, the liability of the company

shall not be disputed on account of any statement in said application.

2d. If, within five years from May 21, 1890, the said insured becomes habitually intemperate, or so far intemperate as to induce delirium tremens, then and in either such case the company may, within said five years, but during his lifetime, cancel this policy, and thereupon shall be absolved from all liability upon the same, except only that it shall pay the amount of the reserve, computed according to the now-existing standard of the State of Wisconsin, if this policy be surrendered in the lifetime of the insured and within one year from the cancellation of the same.

3d. If this policy shall be assigned, a duplicate of the assignment shall, within thirty days, be given to the company, and due proof of interest shall be produced on making claim.

Filed in the United States district court, district of Washington. June 17, 1901.

R. M. HOPKINS, *Clerk.*
H. M. WALTHEW, *Deputy.*

(Endorsed:) No. 729. In the United States circuit court of
16 appeals for the ninth circuit. *In re* D. N. Holden and Lizzie Holden, bankrupts. Transcript of certain proceedings. Filed Aug. 10, 1901. F. D. Monckton, clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

In re D. N. HOLDEN and LIZZIE HOLDEN, Bankrupts. No. —.

Petition for Revision and Review of Order of District Court in Bankruptcy.

To the honorable the judges of the United States circuit court of appeals for the ninth circuit:

The petition of J. A. Stratton respectfully shows as follows:

I.

In the district court of the United States for the district of Washington, northern division, two separate proceedings were begun against D. N. Holden and Lizzie Holden, his wife, on the 19th day of January, 1901, to the end that they each be declared a bankrupt, and on the 9th day of February, 1901, these two proceedings were consolidated.

II.

Thereafter, on the 25th day of February, 1901, each of the
17 aforesaid Holdens was adjudged a bankrupt, and thereafter, in the same proceedings, your petitioner became the duly elected and qualified trustee in bankruptcy of each of their estates under the laws of the United States.

III.

Thereafter the aforesaid bankrupts, and each of them, claimed exemption in their favor of two certain policies of life insurance in the hands of the trustee upon the life of D. N. Holden, payable to Lizzie Holden, the wife. Of these policies copies are hereto annexed and made a part of this petition. As therein appears, these policies are respectively in the sum of $5,000 and $2,000 in the event of death, and have a present cash surrender value combined of about $2,200.

IV.

Such proceedings were had upon this application for exemption that the claim of the bankrupts was on the 17th day of June, 1901, denied by the referee; but upon certification of the matter to the district court, his action was, on July 16th, 1901, overruled and the exemption in favor of the bankrupts by order was allowed.

V.

Your petitioner, considering himself aggrieved by this order of the district court, respectfully applies to this honorable court for a revision and review thereof to the end that the claim of exemption of the bankrupts of these policies of insurance may be denied and the action of the lower court corrected, and that such orders emanate from this court as are necessary to that end. For this
18 purpose your petitioner annexes hereto a certified copy of so much of the record as will enable your honorable court to review and correct the action of the district court with due care and justice to all concerned.

J. A. STRATTON,
As Trustee in Bankruptcy of D. N. Holden and Lizzie Holden, Bankrupts, Petitioner.
BAUSMAN & KELLEHER,
Counsel for Petitioner.

UNITED STATES OF AMERICA,
District of Washington, County of King, } *ss:*

J. A. Stratton, being first duly sworn, on oath says: That he is the petitioner named in the foregoing petition; that he has read the same, knows the contents thereof and believes the same to be true.

J. A. STRATTON.

Subscribed and sworn to before me this 20th day of July, 1901.
[SEAL.]
JAY C. ALLEN,
Notary Public in and for the State of Washington, Residing at Seattle.

(Endorsed:) No. 729. Original. In the United States circuit court of appeals. *In re* D. N. Holden and Lizzie Holden, bankrupts. Petition for revision and review of order of district court in bankruptcy. Filed August 5, 1901. F. D. Monckton, clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

In re D. N. HOLDEN and LIZZIE HOLDEN, Bankrupts. No. —.

Notice of Petition for Revision.

To D. N. Holden and Lizzie Holden, bankrupts, and to P. P. Carroll, your solicitor:

You and each of you will please take notice that J. A. Stratton, trustee in bankruptcy in those certain consolidated causes numbered 1953 and 1954, in the district court of the United States for the district of Washington, northern division, wherein you were adjudged bankrupts, has filed in the United States circuit court of appeals for the ninth circuit his petition for a revision of that certain order of the district court aforesaid in the consolidated causes aforesaid made on the 16th day of July, 1901, allowing your claim of exemption of certain policies of insurance therein considered and reversing the ruling of the referee denying that exemption.

You will also take notice that the aforesaid trustee will call up for hearing the aforesaid petition at the regular annual Seattle term of the United States circuit court of appeals for the ninth
20 circuit, to be held on the second Monday of September next in the court-room of the United States district court for the district of Washington, northern division, in the city of Seattle, Washington, at the hour of eleven o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

BAUSMAN & KELLEHER,
Solicitors for J. A. Stratton, Trustee in Bankruptcy of D. N. Holden and Lizzie Holden, Bankrupts.

Received a copy of the foregoing notice, together with copy of petition for revision and record, this 7th day of August, 1901.

P. P. CARROLL,
By J. E. C.,
Solicitor for D. N. Holden and Lizzie Holden, Bankrupts.

(Endorsed:) 729. Original. In the United States circuit court of appeals for the ninth circuit. *In re* D. N. Holden and Lizzie Holden, bankrupts. Notice of petition for revision. Filed Aug. 10, 1901. F. D. Monckton, clerk.

21 In the United States Circuit Court of Appeals for the Ninth Circuit.

In re D. N. HOLDEN and LIZZIE HOLDEN, Bankrupts. No. —.

Stipulation.

It is hereby stipulated and agreed by and between Bausman and Kelleher, solicitors for J. A. Stratton, appellant and trustee, and P. P. Carroll, solicitor for said bankrupts, appellees:

That for the purpose of said appeal, it is admitted that Schedule "A," attached to said bankrupts' answer and cross-petition, filed February 9th, 1901, shows that all and every of the liabilities of said bankrupts were made and contracted between the first day of September, 1900, and the first day of December, 1900; and that Schedule "A," attached to said bankrupts' claim of exemptions, filed April 4th, 1901, shows that said bankrupts claim that the life-insurance policies in controversy in this appeal are exempt under that certain law of the State of Washington approved March 20, 1895, and as amended by an act of the legislature of said State, approved March 10, 1897; which said law as amended appears in the published laws of said State, designated as the Laws of Washington, session of 1897, page 70.

BAUSMAN AND KELLEHER,
Solicitors for Appellant.
P. P. CARROLL,
Solicitor for Appellees.

(Endorsed:) Stipulation as to certain facts. Filed August 19, 1901. F. D. Monckton, clerk.

22 In the District Court of the United States for the District of Washington, Northern Division.

In the Matter of D. N. HOLDEN and LIZZIE HOLDEN, Bankrupts. Nos. 1953, 1954. Consolidated.

Answer.

To the Honorable C. H. Hanford, judge of said court:

Comes now the above-named respondents D. N. Holden and Lizzie Holden, and by leave of court, consolidating said causes, join herein in this answer and response to the petition of the First National Bank of Seattle:

I.

Respondents admit the matters and things alleged in paragraphs I, II and III of the petition of said bank.

II.

Referring to the fourth paragraph of said petitions, respondents admit that said D. N. Holden and Lizzie Holden are insolvent, but respondents deny each and every other allegation made and contained therein.

III.

Respondents deny each and every allegation made and contained in the fifth paragraphs of said petitions of said bank, except as to the giving of the deed for $15,000.00 and the recording thereof.

IV.

Referring to the sixth paragraphs of said petitions, respondents admits that the conveyance referred to in said paragraphs "consists of the whole of said Holden's real estate;" but respondents deny each and every other allegation made and contained therein.

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V.

Respondents deny each and every allegation made and contained in the seventh paragraphs of said petitions.

Respondents further answering said petitions respectfully show unto your honor:

I.

That respondents are now and at all the times and dates hereinafter mentioned were husband and wife.

II.

That on or about the 1st day of November, 1900, respondents owned one-half of the capital stock of the Holden and Wilson Furniture Company, a corporation organized under the laws of the State of Washington and *was* doing business in the city of Seattle, in said State; and that on said day Howard D. Thomas, Jr., was the owner of 175 shares of the capital stock of said company; and because of differences between respondents and said Thomas, respondents thought it best for their business interest in said company to buy the said stock of the said Thomas, and respondents agreed with said Thomas to buy said stock for $22,000.00, and said Thomas agreed to sell his said stock for $22,000.00 to respondents.

III.

That on the 5th day of November, 1900, respondents obtained a loan of eleven thousand five hundred dollars ($11,500.00) from Eugene F. Lawson; and that the money borrowed from said Lawson was paid according to agreement to said Thomas for his said stock; and respondent- gave to said Lawson their promissory note for said eleven thousand five hundred dollars ($11,500.00) payable ten days after date with — per cent. interest per annum, and to secure the payment of said note respondents delivered to said Lawson 175 shares of the capital stock of said company and the said Lawson was also to have as security the said stock of the said Thomas as soon as the same came into the possession of respondents.

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IV.

That on or about the first day of December, 1900, respondents borrowed of said Lawson the further sum of thirty-five hundred dollars ($3500.00) and to secure the repayment of the same and the said note for $11,500.00 took up said note of November 5th, 1900,

for $11,500.00 and the said stock held as security and gave their note to said Lawson for fifteen thousand dollars ($15,000.00), payable January 1, 1901, with interest at six per cent. per annum, and to secure the payment of the said note for $15,000.00, gave a mortgage on all their real property, which mortgage was recorded in the auditor's office of said King county on the 12th day of December, 1900, and the money borrowed as aforesaid was expended as aforesaid and in the conduct of the said business of respondents.

V.

That on or about the 11th day of December, 1900, being convinced of their inability to pay said note for $15,000.00, to save expense and litigation, respondents deeded all their said real property to said Lawson in full satisfaction of said debt and the payment of said note, interest and mortgage.

Respondents further represent and show unto your honor:

I.

That on or about the 4th day of December, 1900, a receiver was appointed for the said Holden and Wilson Furniture Company, a corporation organized and doing business under the laws of the State of Washington, as hereinbefore in this answer set forth in the cause numbered 30,467 in the superior court of said State in and for the county of King, entitled The Seattle Mattress and Upholstery Company, plaintiff, *v.* The Holden and Wilson Furniture Company, defendant, and that the failure of said furniture company was the real cause of the failure of respondents.

II.

That respondents have resided in the city of Seattle, King county, Washington, for more than six months last past, and have had their principal place of business in said city; and that during said time respondents were engaged in the business and occupation of buying and selling household goods, fixtures and furniture within the said judicial district.

III.

That respondents owe debts which they are unable to pay; that they are willing to surrender all their property for the benefit of their creditors, except such as is exempt by law; and respondents desire to obtain the benefit of the acts of Congress relating to bankruptcy.

IV.

That the schedule hereto annexed marked A, and verified by your petitioners' oaths, contain a full and true statement of all their debts, and (so far as it is possible to ascertain) the names and places

of residence of their creditors, and such further statements concerning said debts as are required by the provisions of said acts:

That the schedule hereto annexed, marked B, and verified by your petitioners' oaths, contains an accurate inventory of all their property, both real and personal, and such further statements concerning said property as are required by the provisions of said acts.

Wherefore your petitioners pray that they may be adjudged by the court to be bankrupts within the purview of said acts.

D. N. HOLDEN.
LIZZIE HOLDEN.

P. P. CARROLL, *Attorney.*

UNITED STATES OF AMERICA, }
District of Washington, } ss:

We, D. N. Holden and Lizzie Holden, the respondents mentioned and described in the foregoing answer, do hereby make solemn oath that the statements contained therein are true according to the best of our knowledge, information and belief.

D. N. HOLDEN,
LIZZIE HOLDEN,
Respondents.

26 Subscribed and sworn to before me this 8th day of February, A. D. 1901.

P. P. CARROLL,
Notary Public in and for the State of Washington, Residing at Seattle.

[NOTARIAL SEAL.]

SCHEDULE "A."

Names of creditors.	Residence.	When and where contracted.	Nature and consideration.	Amount.
Holden & Wilson Furniture Company.	Seattle, Wash.	Seattle, Wash..	Merchandise and money loaned.	$10,371.02
Howard D. Thomas, Jr.....	"	11, 5, '00.... ditto.	Stock purchased.	6,000.00
First national bank.....	do.	Between Sept. 1 and Dec. 1, 1900, at Seattle, Wash.	Money loaned.	5,150.00
Louch, Augustine & Co.....	do.	do.	Merchandise.	204.85
Z. C. Miles & Piper Co.....	do.	do.	do.	12.40
A. J. Prayer & Sons.....	do.	do.	do.	64.00
F. A. Buck & Co.....	do.	do.	do.	285.00
Seattle Ice Co.....	do.	do.	do.	15.00
Aggers-Bosworth Co.....	do.	do.	do.	22.88
Diamond Ice Co.....	do.	do.	do.	14.25
Hardy-Hall Arms Co.....	do.	do.	do.	37.85
The Kerry Lumber Co. ..	do.	do.	do.	38.52
Lilly, Bogardus Co.....	do.	do.	do.	42.39
Lowman & Hanford.	.....	.....	.....	
Stationery & P. Co	do.	do.	Printing.....	51.25
Newells Mill & Mfg. Co.....	do.	do.	Lumber	110.00
Pioneer Printing Co	do.	do.	Printing....	76.25
O. W. Peterson & Co	do.	do.	Merchandise.	29.75
Pacific Printing Co.....	do.	do.	Printing.....	16.50
Eureka Baking Co.....	do.	do.	Merchandise.	58.00
Royal Dairy Co	do.	do.	do.	100.00
The Seattle Electric Co	do.	do.	Advertising..	10.00
Standard Oil Co.....	do.	do.	Merchandise.	16.92
Seattle City Bill Posting Company.	do.	do.	Advertising .	61.66
M. Seller & Co	do.	do.	Merchandise.	40.28
The John Schram Co.....	do.	do.	do.	52.00
Howard D. Thomas, Jr.....	do.	do.	Suit pending.	4,500.00
James Brownie.....	do.	do.	Judgment ...	225.00
Gordon & Co	do.	do.	do.	228.78
Pacific Coast Co.....	do.	do.	Coal..... ..	62.80
G. H. Braas.	do.	do.	Photographs.	12.00
Schwabacher Hardware Co...	do.	do.	Merchandise.	50.23
Stetson & Post Mill Co.... ..	do.	do.	do.	27.32
Galbrath, Bacon & Co.....	do.	do.	do.	37.85
Total.....	.....	.....	.....	$28,024.75

D. N. HOLDEN,
LIZZIE HOLDEN,
Respondents.

UNITED STATES OF AMERICA, } ss:
District of Washington, }

On this 8th day of February, A. D. 1901, before me personally came D. N. Holden and Lizzie Holden, the persons mentioned in and who subscribed to the foregoing schedule, and who, being by me first duly sworn, did declare the said schedule to be a statement of all their estate, both real and personal, in accordance with the acts of Congress relating to bankruptcy.

[NOTARIAL SEAL.] P. P. CARROLL,
Notary Public in and for the State of Washington, Residing at Seattle.

28 SCHEDULE "B."

Respondents own or control no property, real or personal, other than their household furniture, goods and personal effects of about the value of five hundred dollars ($500.00).

D. N. HOLDEN,
LIZZIE HOLDEN,
Respondents.

UNITED STATES OF AMERICA, } ss:
District of Washington, }

On this 8th day of February, A. D. 1901, before me personally came D. N. Holden and Lizzie Holden, the persons mentioned in and who subscribed to the foregoing schedule, and who, being duly sworn, did declare the said schedule to be a statement of all their estate, both real and personal, in accordance with the acts of Congress relating to bankruptcy.

P. P. CARROLL,
[NOTARIAL SEAL.] *Notary Public in and for the State of Washington, Residing at Seattle.*

SEATTLE, *Feb'y 8th*, 1901.

Rec'd copy of the within answer.
BAUSMAN, KELLEHER & EMORY,
Att'ys for Petitioner First National Bank of Seattle.

(Indorsed:) Answer. Filed in the U. S. district court district of Washington Feb. 9, 1901 at 4 p. m. R. M. Hopkins, clerk, H. M. Walthew, deputy.

29 UNITED STATES OF AMERICA, } ss:
District of Washington, }

I, R. M. Hopkins, clerk of the district court of the United States for the district of Washington, do hereby certify that I have compared the foregoing copy with the original answer of bankrupts in the foregoing entitled cause, now on file and of record in my office at Seattle, and that the same is a true and perfect transcript of said original and of the whole thereof.

Witness my hand and the seal of said court this 13th day of September 1901.

R. M. HOPKINS, *Clerk*,
By H. M. WALTHEW, *Deputy*.

(Endorsed:) U. S. circuit court of appeals for the ninth circuit. No. 729. Certified copy of answer. Filed September 13, 1901. F. D. Monckton, clerk.

30 In the United States Circuit Court of Appeals for the Ninth Circuit.

In the Matter of D. N. HOLDEN and LIZZIE HOLDEN, Bankrupts. No. 729.

Before McKenna, circuit justice, and Gilbert and Ross, circuit judges.

McKENNA, *Circuit Justice*:

This is a petition filed under section 24–*b* of the bankruptcy law of 1898, to renew and order of the district court for the district of Washington, northern division, made and entered in the above-entitled cause.

The said D. N. Holden and Lizzie Holden were separately proceeded against in bankruptcy by their creditors. The causes were consolidated by consent, and "one and the same answer" filed to the petitions. Subsequently it was adjudged that the "respondents and each of them are bankrupts within the true intent and meaning of the acts of Congress relating to bankruptcy."

The respondents then prayed exemption from the claims of creditors of two life-insurance policies. The claim was disallowed by the referee who made due report of his action to the court. The respondents filed exceptions to the report, and after hearing, the court, by an order duly entered on the 16th of July, 1901, vacated the report and adjudged the policies to be exempt. To review this order of the district court the present petition was filed by J. A. Stratton, the duly appointed trustee of the estates of said bankrupts. No answer has been filed to the petition, and the question is whether upon the facts stated the order in the district court should be revised.

31 The policies in question were issued on the 15th of June, 1894, by the Northwestern Life Insurance Company of Milwaukee, Wisconsin, and were respectively numbered 206,383 and 303,921, and were respectively for the amounts of $5,000 and $2,000. Daniel L. Holden was the insured in both, and Lizzie Holden was the beneficiary in both, with the provision, however, that if she should not survive him payment should be made to his executors, administrators and assigns.

It was provided in the policy No. 206,383 that it is "issued on the semi-tontine plan, and its tontine dividend period is twenty years,"

and the following is endorsed on the policy: "Upon surrender by the insured and beneficiary of a policy of $10,000 of like number and kind dated May 2nd, 1890, this policy for $5,000 is issued at their request in lieu of one-half of the former policy; in all other respects this policy is made and accepted pursuant and subject to the application upon which the original policy was issued. A full-paid life non-participating policy, No. 303,931, for $2,000 is issued in consideration of the surrender of one-half of the original policy."

It is alleged in the petition that the policies have a present cash surrender value combined of about $2,200; and it was stated on the argument that the creditors of each of the bankrupts are the same.

It is provided by the laws of the State of Washington "that the proceeds or values of all life insurance shall be exempt from all liability for any debt." (Laws 1895, p. 336.)

By section 70–*a* of the bankrupt law of 1898 it is provided that "the trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon his or their appointment or qualification, shall in turn be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, except in so far as it is
32 to property which is exempt, to all (1) documents relating to his property; (2) interests and patents, patent rights, copyrights, and trade-marks; (3) powers which he might have exercised for his own benefit, but not those which he might have exercised for some other person; (4) property transferred by him in fraud of his creditors; (5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him: *Provided*, That when any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets and (6) rights of action arising upon contracts or from the unlawful taking or detention of, or injury to, his property."

Section 6 of the bankrupt law is as follows: "Exemptions of bankrupts. *a*—This act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months or the greater portion thereof immediately preceding the filing of the petition."

The effect and extent of section 6 was considered by this court in the matter of Scheld, 44, C. C. A., 233, 104 Fed. Rep., 870, and it was said, that the purpose of the section did not pervade the whole act, but was controlled by section 70–*a*, and that under the latter section policies of insurance payable to the bankrupt himself, his

33 estate or personal representatives passed to the trustee of the estate. But we also said, "It will be seen that the clause of section 70 above quoted does not include policies of insurance payable to the wife, children or other kin of the bankrupt, but is limited to policies the proceeds of which are payable to the bankrupt himself, his estate or personal representatives. The enactment does not deprive the family of a debtor of the protection which he may have secured to them in taking out policies for their benefit payable at his death, but it does prevent debtors from availing themselves of the opportunity of making investments for their own benefit in the form of endowment policies, or policies payable to themselves, and holding the same, while seeking a discharge from their debts through the bankruptcy act."

What is the character of the policies in the case at bar? Are they covered by the proviso of section 70? It will be observed that the policies were not payable to either Holden or his wife absolutely but to her only, if she survived him, and to his personal representatives if he survived her. Subject to such contingent interest in him the policies and the money to become due under them belong to her, and it is beyond his power to transfer them to any other person or to surrender them. *In re* Heilbron's estate, 14 Wash. 336, citing Central Bank of Washington *v.* Hume, 128 U. S. 195, and other cases. Under the laws of Washington her interest in the policies became her separate property and was assignable by her,—2 May on Insurance 399 Q, and cases cited. Each therefore, has an interest in the policies, and each must be held to have an insurance policy which has a cash surrender value payable to him or to her, his or her estate or personal estate or personal representatives, and subject therefore to the provisions of section 70—in other words, passed to their respective trustees as assets of their respective estates. It may be that neither could surrender the policies without the consent of the other, but such right of surrender passed with the policies to their respective trustees.

34 In Steele *et al. v.* Buel *et al.*, 44 C. C. A. 287, the circuit court of appeals of the eight- circuit has decided that the rule of exemption of section 6 pervades the whole act, and is to be read into every other section and provision of the act. The difference of opinion between that learned court and this court demonstrates the ambiguity of the bankrupt act, and while not insensible to the necessity of harmony in the decisions of the courts of appeal, we are not disposed to depart from the ruling *in re* Scheld. There is a way open to respondents for a further review of the questions involved.

It follows that the order of the district court should be revised in accordance with this opinion, and it is so ordered.

(Endorsed:) Amended opinion. Filed January 16, 1902. F. D. Monckton, clerk.

35 United States Circuit Court of Appeals for the Ninth Circuit.

In the Matter of D. N. HOLDEN and LIZZIE HOLDEN, Bankrupts. No. 729.

Appeal from the district court of the United States for the district of Washington, northern division.

This cause came on to be heard on the transcript of the record from the district court of the United States for the district of Washington, northern division, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the order or decree of the said district court in this cause be, revised in accordance with the opinion of this court.

(Endorsed:) Decree (second). Filed and entered Jan. 16, 1902, F. D. Monckton, clerk.

36 In the United States Circuit Court of Appeals for the Ninth Circuit.

In the Matter of D. N. HOLDEN and LIZZIE HOLDEN, Bankrupts. No. 729. Appeal.

The above-named bankrupts D. N. Holden and Lizzie Holden, conceiving themselves aggrieved by the decree entered on January 16, 1902, in the above-entitled proceeding, do hereby appeal from said decree to the Supreme Court of the United States, and they pray that this their appeal may be allowed; and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

P. P. CARROLL,
JOHN E. CARROLL,
Solicitors for D. N. Holden and Lizzie Holden,
72 *Hinckley Block, Seattle, Wash.*

And now, to wit, on February 12th, 1902, it is ordered that the appeal be allowed as prayed for.

WM. B. GILBERT,
Senior Circuit Judge.

(Endorsed:) Appeal and order allowing appeal. Filed Feb. 12, 1902, F. D. Monckton, clerk. Copy of this order received this 13th February, 1902, Bausman & Kelleher, counsel for appellee.

37 In the United States Circuit Court of Appeals for the Ninth Circuit.

In the Mat'er of DANIEL N. HOLDEN and LIZZIE HOLDEN, Bankrupts. No. 729.

Comes now the above-named bankrupts, Daniel N. Holden and Lizzie Holden, by their solicitors, P. P. Carroll and John E. Carroll, and make the following assignment of errors, in the opinion and decree of this honorable court, filed herein respectively, on the 6th, and 16th, day of January, A. D., 1902.

First. It was error to find and hold that the life-insurance policies issued on the 15th, day of June, 1894, and numbered respectively, 206,383, and 303,921, to Daniel N. Holden, for the respective sums of $5,000.00, and $2,000.00, were not exempt under the bankrupt law.

Second. It was error to order that the decree of the district court, allowing said bankrupts' claim of exemption, be set aside.

Third. It was error not to find and hold that said policies of insurance and the proceeds thereof, were exempt under the bankrupt act, from all claims of the creditors of said bankrupts.

P. P. CARROLL,
JOHN E. CARROLL,
Solicitors for Appellants.

(Endorsed:) Assignment of errors. Filed Feb. 17, 1902. F. D. Monckton, clerk Due service admitted and copy received this 17 day of February, 1902. Bausman & Kelleher, solicitors for appellee.

38 In the United States Circuit Court of Appeals for the Ninth Circuit.

In the Matter of DANIEL N. HOLDEN and LIZZIE HOLDEN, Bankrupts. No. 729.

Ordered that the above-named bankrupts be, and are hereby, allowed to prosecute their appeal to the Supreme Court of the United States without bond.

WM. B. GILBERT,
United States Circuit Judge.

To the entry of the foregoing order appellee Stratton, trustee, consents and that the appeal be prosecuted without bond, appellants advancing their own costs.

FREDERICK BAUSMAN,
Solicitor for Stratton, Trustee, Appellee.

(Endorsed:) Order and waiver of bond. Filed Feb. 17, 1902. F. D. Monckton, clerk.

39 United States Circuit Court of Appeals for the Ninth Circuit.

In the Matter of D. N. HOLDEN and LIZZIE HOLDEN. No. 729.

Certificate of Clerk Circuit Court of Appeals to Transcript.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing thirty-eight (38) pages, numbered from one (1) to thirty-eight (38), inclusive, to be a full, true and correct copy of the printed record, and of the assignment of errors, and of all proceedings in the above-entitled matter as the same appear of record in my office, and that the same together constitute the transcript of record on appeal herein to the Supreme Court of the United States.

Attest my hand and the seal of said United States circuit court of appeals for the ninth circuit, at San Francisco, California, this 19th day of March, A. D. 1902.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

40 UNITED STATES OF AMERICA, *ss:*

The President of the United States to J. A. Stratton, trustee, and to Bausman & Kelleher, his solicitors, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the city of Washington, in the District of Columbia within sixty days from the date hereof, pursuant to an order allowing an appeal of record in the office of the clerk of the United States circuit court of appeals for the ninth circuit in the matter of D. N. Holden and Lizzie Holden, bankrupts, and to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William B. Gilbert, senior United States circuit judge for the ninth circuit this 13th day of February, A. D. 1902.

WM. B. GILBERT,
United States Circuit Judge.

41 Service hereof by copy admitted this 13th day of February, A. D. 1902.

BAUSMAN & KELLEHER,
Solicitors for J. A. Stratton, Trustee.

[Endorsed:] No. 729. U. S. circuit court of appeals for the ninth circuit. In the matter of D. N. and Lizzie Holden bankrupts. Citation on appeal to Supreme Court U. S. Filed Feb. 13th, 1902. F. D. Monckton, clerk.

42 The above and foregoing transcript of record of appeal to the Supreme Court of the United States, in the matter of D. N. & Lizzie Holden is approved.

Dated at Seattle Mar. 24" 1902.

P. P. CARROLL,
JOHN E. CARROLL,
Solicitors for Appellants.

Endorsed on cover: File No. 18,493. U. S. C. C. of appeals, 9th circuit. Term No. 301. D. N. Holden and Lizzie Holden, bankrupts, appellants, *vs.* J. A. Stratton, trustee. Filed April 14th, 1902.

In the Supreme Court of the United States.

October Term, 1902.

D. N. HOLDEN and LIZZIE HOLDEN, Bankrupts, Appellants,
vs.
J. A. STRATTON, Trustee, Appellee.
} No. 301.

Certificate.

Whereas, the above-named appellants were duly adjudged bankrupts in the United States district court for the district of Washington, northern division, on the 25th day of February, 1901; and

Whereas, appellants duly claimed two certain life-insurance policies as exempt to them under the acts of Congress relating to bankruptcy; and

Whereas, said claim of exemption was allowed by said district court; and

Whereas, on petition to review, the United States circuit court of appeals for the ninth circuit dissallowed said claim of exemption;

Whereas, it appears that the United States circuit court of appeals for the eighth circuit allowed a similiar claim of exemption;

Now, therefore, on motion of P. P. Carroll and John E. Carroll, solicitors for appellants, this is to certify that in my opinion the determination of the question, or questions, involved in the allowance or rejection of appellants' said claim of exemption to said life-insurance policies is essential to a uniform construction of said bankruptcy act throughout the United States.

JOSEPH McKENNA,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] No. 301. In the Supreme Court of the United States. D. N. Holden & Lizzie Holden, bankrupts, appellants, *vs.* J. A. Stratton, trustee, appellee. Certificate. Carroll & Carroll, att'ys for appellants, 72 Hinckley block, Seattle.

[Endorsed:] File No. 18,493. Supreme Court U. S., October term, 1902 Term No. 301. D. N. Holden *et al.*, app'ts, *vs.* J. A. Stratton, trustee. Certificate of Mr. Justice McKenna. Filed March 20, 1903.